

Nuclear Regulatory Commission

§ 11.30

for the “U” special nuclear material access authorization may be refunded depending upon the status of the single scope investigation at the time of withdrawal or cancellation.

[64 FR 15647, Apr. 1, 1999]

CRITERIA FOR DETERMINING ELIGIBILITY FOR ACCESS TO, OR CONTROL OVER, SPECIAL NUCLEAR MATERIAL

§ 11.21 Application of the criteria.

(a) The decision to grant or deny special nuclear material access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, that to grant or deny special nuclear material access authorization is or is not inimical to the common defense and security and is or is not clearly consistent with the national interest.

(b) To assist in making these determinations, on the basis of all the information in a particular case, there are set forth in § 10.11 of this chapter a number of specific types of derogatory information. These criteria are not exhaustive but contain the principal types of derogatory information which in the opinion of the Commission create a question as to the individual's eligibility for special nuclear material access authorization. These criteria are subject to continuing review and may be revised from time to time as experience and circumstances may make desirable.

(c) When the reports of an investigation of an individual contain information reasonably falling within one or more of the classes of derogatory information listed in § 10.11, it creates a question as to the individual's eligibility for special nuclear material access authorization. In these cases, the application of the criteria must be made in light of and with specific regard to whether the existence of the information supports a reasonable belief that the granting of a special nuclear material access authorization would be inimical to the common defense and security. The Director, Division of Facilities and Security, may authorize the granting of a special nuclear material access authorization on the basis of the information in the case or may

authorize the conduct of an interview with the individual and, on the basis of the interview and other investigation as the Director deems appropriate, may authorize the granting of a special nuclear material access authorization. Otherwise, a question concerning the eligibility of an individual for a special nuclear material access authorization must be resolved in accordance with the procedures set forth in §§ 10.20 through 10.38 of this chapter.

(d) In resolving a question concerning the eligibility or continued eligibility of an individual for a special nuclear material access authorization by action of the Hearing Examiner or a Personnel Security Review Panel,³ the following principle shall be applied by the Examiner and the Personnel Security Review Panel: Where there are sufficient grounds to establish a reasonable belief as to the truth of the information regarded as substantially derogatory and when the existence of this information supports a reasonable belief that granting access would be inimical to the common defense and security, this will be the basis for a recommendation for denying or revoking special nuclear material access authorization if not satisfactorily rebutted by the individual or shown to be mitigated by circumstance.

[45 FR 76970, Nov. 21, 1980, as amended at 47 FR 38683, Sept. 2, 1982; 64 FR 15647, Apr. 1, 1999]

VIOLATIONS

§ 11.30 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

³The functions of the Hearing Examiner and the Personnel Security Review Panel are described in part 10 of this chapter.

§ 11.32

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section 186 of the Atomic Energy Act of 1954, as amended.

[57 FR 55070, Nov. 24, 1992]

§ 11.32 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under sections 161b, 161i, or 161o of the Act. For purposes of section 223, all regulations in part 11 are issued under one or more of sections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 11 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§11.1, 11.3, 11.5, 11.7, 11.8, 11.9, 11.16, 11.21, 11.30, and 11.32.

[57 FR 55070, Nov. 24, 1992]

PART 12—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN AGENCY PROCEEDINGS

Subpart A—General Provisions

Sec.

- 12.101 Purpose.
- 12.102 When the EAJA applies.
- 12.103 Proceedings covered.
- 12.104 Eligibility of applicants.
- 12.105 Standards for awards.
- 12.106 Allowable fees and expenses.
- 12.107 Rulemaking on maximum rates for attorney fees.
- 12.108 Awards against other agencies.
- 12.109 Decisionmaking authority.

Subpart B—Information Required From Applicants

- 12.201 Contents of application.

10 CFR Ch. I (1–1–11 Edition)

- 12.202 Net worth exhibit.
- 12.203 Documentation of fees and expenses.
- 12.204 When an application may be filed.

Subpart C—Procedures for Considering Applications

- 12.301 Filing and service of documents.
- 12.302 Answer to application.
- 12.303 Reply.
- 12.304 Comments by other parties.
- 12.305 Settlement.
- 12.306 Further proceedings.
- 12.307 Decision.
- 12.308 Agency review.
- 12.309 Judicial review.
- 12.310 Payment of award.

AUTHORITY: Sec. 203(a)(1), Pub. L. 96-481, 94 Stat. 2325 (5 U.S.C. 504(c)(1)); Pub. L. 99-80, 99 Stat. 183.

SOURCE: 59 FR 23121, May 5, 1994, unless otherwise noted.

Subpart A—General Provisions

§ 12.101 Purpose.

The purpose of this part is to state the regulatory requirements for award of attorney fees to eligible individuals and entities in certain administrative proceedings before the Nuclear Regulatory Commission, in implementation of the Equal Access to Justice Act, 5 U.S.C. 504 (EAJA), which provides for the award of attorney fees and other expenses to parties to “adversary adjudications”, as defined in 5 U.S.C. 504(b)(1)(C). In general, an “adversary adjudication” is an adjudication that is required by statute to be determined on the record after opportunity for hearing before an agency of the United States and in which the position of the agency, or any component of the agency, is presented by an attorney or other representative who enters an appearance and participates in the proceeding. However, some agency adjudications are expressly excluded from coverage by 5 U.S.C. 504 (e.g., an adjudication for the purpose of granting or renewing a license) even though they fall within this general definition, and certain appeals before an agency board of contract appeals and Program Fraud Civil Remedies Act hearings conducted under 31 U.S.C. ch. 38 are expressly covered.

An eligible party may receive an award in an adversary adjudication